

# **SURVEY GUIDE**

## **CRITICAL ACCESS HOSPITALS (INCLUDING SWING BED CAHs)**

**WISCONSIN DEPARTMENT OF HEALTH & FAMILY SERVICES**  
**Division of Disability and Elder Services**  
**Bureau of Quality Assurance**  
[http://dhfs.wisconsin.gov/rl\\_DSL/Hospital/pde3167.pdf](http://dhfs.wisconsin.gov/rl_DSL/Hospital/pde3167.pdf)

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## TABLE OF CONTENTS

	<u>Page Number</u>
<b>HEALTH SERVICES SECTION CONTACTS</b>	<b>3</b>
<b>I. INTRODUCTION</b>	<b>4</b>
<b>II. SURVEY TASKS</b>	<b>4</b>
<b>III. EXPLANATION OF SURVEY FINDINGS</b>	<b>4</b>
A. State Statutes and Rules	5
B. Federal Conditions of Participation and Levels of Deficiencies	5
<b>IV. PLAN OF CORRECTION</b>	<b>6</b>
A. Content	6
B. Correction of State Violations	6
C. Correction of Federal Deficiencies	6
D. Verification of Correction	7
E. Failure to Correct Violations and Deficiencies	7
<b>V. WAIVERS AND VARIANCES</b>	<b>7</b>
A. State Waiver or Variance	8
B. Federal Regulation Waivers	8
<b>VI. APPEAL PROCESS</b>	<b>9</b>
A. State Appeals	9
B. Federal Appeals	9
<b>VII. COMPLAINTS</b>	<b>9</b>
A. Entity Patient Complaints	9
B. Caregiver Misconduct	10

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\_\_\_\_\_

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\_\_\_\_\_

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## SURVEY INFORMATION

Entity Name: \_\_\_\_\_

Entity Type: \_\_\_\_\_

License #: \_\_\_\_\_ Certification #: \_\_\_\_\_

Location: \_\_\_\_\_

Entrance Date: \_\_\_\_\_ Exit Date: \_\_\_\_\_

## **SURVEY GUIDE**

### **CRITICAL ACCESS HOSPITALS INCLUDING SWING BED**

**This survey guide is a general reference for informational purposes. In the event of any conflict between information provided in this guide and the state and federal legal requirements for Critical Access Hospitals (CAH), please rely on the applicable legal requirements.**

#### **I. INTRODUCTION**

This guide explains the survey certification process for CAH status in Wisconsin. (See [Appendix W, Survey Protocol, Regulations and Interpretive Guidelines for Critical Access Hospitals \(CAHs\) and Swing Beds in CAHs, Rev. 05-2104.](#)) The Bureau of Quality Assurance (BQA) conducts unannounced surveys of hospitals, including CAHs, to ensure that each hospital meets state and federal requirements.

CAH survey types include the transition survey for an initial CAH certification, the first annual follow-up survey, and periodic recertification surveys. All of these hospital surveys are unannounced.

The United States Code, section 42 USC 1395i-4, requires an initial follow-up survey within 12 to 15 months following designation as a CAH. Periodic recertification surveys may occur every two or three years thereafter, based on CMS directives. A recertification survey is done following relocation.

The BQA survey team will consist of one or more registered nurses and a professional engineer or an architect. The LSC staff will conduct a separate physical environment tour and review of maintenance records.

If the provider has swing bed certification, surveyors assess the CAH's compliance with the swing-bed requirements at 42 CFR § 485.645 found in Appendix W using open and/or closed records. Swing-bed requirements apply to any patient discharged from a hospital or CAH and admitted to a swing-bed for skilled nursing services. The requirements for acute-care CAHs also apply to swing-bed patients.

#### **II. SURVEY TASKS**

Wisconsin adopts the survey protocol tasks identified by Appendix W including off-site preparation, on-site activities and post survey tasks, in addition to the surveys tasks necessary to enforce state statutes and administrative rules as enumerated in Section III of this guide. The Life Safety Code staff will conduct a separate physical environment tour and review hospital maintenance records.

#### **III. EXPLANATION OF SURVEY FINDINGS**

The surveyors will summarize their findings in a final report. If the hospital is not in compliance with the applicable state or federal requirements, the surveyors will document the findings on a CMS Statement of Deficiencies, CMS-2567 form. If a hospital is out of compliance with a Condition of Participation, the CMS Region V Office in Chicago, Illinois, will issue the federal survey finding report (CMS-2567) to the hospital.

## **A. State Statutes and Rules**

A violation exists when a facility fails to comply with the requirements of a state statute or rule. The Department promulgates and enforces rules necessary to provide safe and adequate care and treatment of patients and to protect the health and safety of patients and employees of the hospital. The Department's authority is derived from the following state statutes and administrative rules:

- Wisconsin Statutes, Chapter 50, Subchapter II
- Wisconsin Administrative Code, Chapter HFS 12: Caregiver Background Checks
- Wisconsin Administrative Code, Chapter HFS 13: Reporting and Investigating Caregiver Misconduct
- Wisconsin Administrative Code, Chapter HFS 124: Hospitals, including Subchapter VI—Critical Access Hospitals
- Wisconsin Statutes, Section 146.40: Instructional Programs for Nurse's Aides; Reporting Client Abuse
- Wisconsin Administrative Code, Chapter HFS 129: Certification of Programs for Training and Testing Nurse Assistants, Home Health Aides and Hospice Aides

## **B. Federal Conditions of Participation and Levels of Deficiencies**

1. **Statutory Requirements:** A federal statutory requirement is created by an Act of Congress. Noncompliance with a statutory requirement may subject the hospital to termination of its Medicare and Medicaid provider agreements. The regulations for CAHs are promulgated under the authority of section 42 USC 1395i-4, also cited as section 1820 of the Social Security Act. Federal regulations that apply to CAHs include, but are not limited to:
  - 42 CFR 485, Subpart F: Conditions of Participation: Critical Access Hospitals (CAH), Sections 42 CFR 485.601 to 485.643
  - 42 CFR 485.623 Physical Plant And Environment
  - 42 CFR 485.623(d) Life Safety From Fire
  - 42 CFR 489.24 and related requirements at 42 CFR 489.20(l), (m), (q), and (r), Emergency Medical Treatment and Labor Acts (EMTALA)
  - 42 CFR 485.645 Special Requirements for Long-Term Care Services (Swing Beds)
  - 42 CFR 485.647 Requirements for Psychiatric and Rehabilitation Distinct Part Units
  - 42 CFR 489, Subpart B: Essentials of Provider Agreements, Sections 42 CFR 489.20 to 489.27
  - 42 CFR 489, Subpart I: Advance Directives, Sections 42 CFR 489.100 to 489.104
2. **Regulatory Requirements:** A hospital applying for a CAH certification must have an existing agreement to participate in the federally sponsored Title XVIII—Medicare program or both Medicare and the Title XIX—Medicaid programs. Accordingly, the hospital will be surveyed for compliance with federal regulations. A federal deficiency exists when the provider fails to comply with a federal statute or regulation.
  - a. **Conditions of Participation:** The essential requirements of each of the major divisions of administration and other services are known as Conditions of Participation. A failure to meet such conditions indicates a breakdown in one of the hospital's major health care systems. Any existing provider agreement may be subject to cancellation or termination if one or more of the Conditions of Participation are not met.
  - b. **Standards:** A standard is a major subdivision of the requirements in the Conditions of Participation. Noncompliance with one or more standards may be considered so serious that it causes noncompliance with the Conditions of Participation as described above.

- c. **Requirements:** A requirement is a subdivision of a standard for hospitals. Noncompliance with one or more requirements can result in the issuance of a SOD that requires a hospital to submit an acceptable plan of correction (POC).

#### IV. PLAN OF CORRECTION

##### A. Content

1. The hospital's POC is submitted on the original statement of survey findings or SOD. An authorized representative of the hospital must sign the POC. To be acceptable, each POC should include the following:
  - a. **What** the hospital will do to correct the violation or deficiency and ensure continued compliance in the future.
  - b. **How** the corrections will be accomplished and monitored.
  - c. **Who** will implement the plan and monitor for future compliance.
  - d. The **date when** correction will be completed, which must be entered in the appropriate column on the survey finding form.
2. The POC is to be submitted to the attention of the surveyor involved in the finding of noncompliance or to CMS if a condition of participation is found out of compliance. Additional sheets of paper may be attached to the survey findings if more space is necessary. During the exit conference, the surveyors will provide the address of the appropriate BQA office where the POC should be sent. [Suggestion: send the POC via certified mail or other carrier method that allows tracking of both the hospital's mailing date and the date the POC is received.]

##### B. Correction of State Violations

1. The hospital will receive a Wisconsin statement of survey findings from BQA following the exit conference. If the hospital has questions regarding the survey findings, it may informally consult with the surveyor's supervisor concerning compliance and noncompliance with state requirements. [Wis. Stats. 50.36(4)]
2. A hospital found out of compliance with state requirements is requested to submit a corrective action plan concerning the state deficiencies. Failure to submit a corrective action plan is subject to disclosure under public record law.

##### C. Correction of Federal Deficiencies

1. Regulations at 42 CFR 488.28(a) allow certification of providers with deficiencies at the Standard or Condition level "only if the facility has submitted an acceptable Plan of Correction (POC) for achieving compliance within a reasonable period of time acceptable to the Secretary." Failure to submit a POC may result in termination of the provider agreement as authorized by 42 CFR § 488.28(a) and 489.53(a)(1). After a POC is submitted, the surveying entity makes the determination of the appropriateness of the POC.
2. A POC is required for all federal deficiencies to retain certification in the Medicare and Medicaid programs. A hospital found to be out of compliance with federal requirements must submit a POC concerning the deficiencies within 10 calendar days of the receipt of the survey findings report. If in doubt, call the appropriate surveyor. Failure to submit an acceptable POC

within 10 calendar days after the hospital receives the SOD could result in nonrenewal of the hospital's Medicare or Medicaid agreement.

3. Federal POCs must be submitted to the office that served the SOD. The hospital should carefully review the cover letter to determine whether the plans should be submitted to the CMS, Region V Office or to the BQA surveyor.
4. Corrections should be accomplished within 60 calendar days or less following approval of a POC. Serious situations require a correction date of 45 calendar days or less. If the completion date extends beyond 60 calendar days—e.g., remodeling, rebuilding, new construction—the POC must include a complete set of benchmark dates fully describing each correction stage, including timetables showing start and completion dates. Additional information such as design contracts, construction contracts and plans for interim life safety measures may be required for a POC to be acceptable.
5. Federal POCs that do not meet content standards will be rejected. In such cases BQA will identify why the POC was not acceptable, return the original documents, and request that an acceptable plan be submitted. The amended plan must again be signed and dated by an authorized representative of the hospital. As noted above, BQA recommends sending the POC by registered or certified mail. Upon receipt, the amended POC will be stamped “original” to designate the plan as current.

#### **D. Verification of Correction**

The BQA will verify correction of all citations after the accepted completion dates have passed. Corrections are verified by an unannounced on-site visit, or when appropriate, through a desk review. Desk review of compliance documentation sent by the hospital to BQA may provide enough information for surveyors to make a determination of compliance.

#### **E. Failure to Correct Violations and Deficiencies**

1. Failure to comply with state requirements may result in the suspension or revocation of the hospital's certificate of approval. [Sec. 50.35, Wis. Stats.; Sec. HFS 124.03(6), Wis. Admin. Code.]
2. The Department of Health and Family Services may, in the event of an emergency condition that imminently threatens the health or safety of patients of a hospital, suspend new admissions to all or a part of the hospital until the Department decides that the hospital has removed or corrected the causes of the violation creating the emergency. [Sec. 50.39(5)(a), Wis. Stats.]
3. Failure to correct a federal deficiency may result in termination of the hospital's participation in the Medicare and Medicaid programs when certain criteria are not met, e.g., if Conditions of Participation are not corrected within 45 calendar days or less from the date the SOD was received.

### **V. WAIVERS AND VARIANCES**

A hospital may ask the Department to grant a waiver or variance of a state administrative rule. The Department may grant the waiver or variance if it finds the waiver or variance will not adversely affect the health, safety, or welfare of any patient and satisfies certain other criteria. Please refer to Sec. HFS 124.04(3)(a), Wis. Admin. Code, for specific requirements for the content of a request for a waiver or variance. The Department cannot grant a waiver or variance from federal requirements nor from state statutes.

## **A. State Waiver or Variance**

1. Definitions:
  - a. **Waiver** means the granting of an exemption from a requirement of Chapter HFS 124, Wis. Admin. Code.
  - b. **Variance** means the granting of an alternative requirement in place of a requirement of Chapter HFS 124, Wis. Admin. Code.
2. Requests: Waivers and variances may be requested at any time and should be made in writing to the Provider Regulation and Quality Improvement Section, Bureau of Quality Assurance, P.O. Box 2969, Madison, WI 53701-2969. If a request for a waiver or variance is part of proposed POC, a written waiver or variance request must also be submitted separately from the POC.
3. Granting or Denying a Waiver or Variance Request: The Department will grant or deny each waiver or variance request, in writing, within 60 calendar days of receipt of a completed request. Notice of denials will contain the reason for denial.
  - a. The terms of a requested variance may be modified upon agreement between the Department and the hospital.
  - b. The Department may impose such conditions on the granting of a waiver or variance that it deems necessary.
  - c. The Department may limit the duration of any waiver or variance.
4. Hearings: Denials of waivers or variances may be contested by requesting a hearing as provided by Chapter 227, Wis. Stats. The hospital has the burden of proving that the denial of a waiver or variance was unreasonable.
5. Waiver or Variance Revocation: The Department may revoke a waiver or variance if:
  - a. The Department determines that the continuance of the waiver or variance is adversely affecting the patient health, safety or welfare; or
  - b. The hospital has failed to comply with a condition imposed on the waiver or variance; or
  - c. The hospital notifies the Department in writing that it wishes to relinquish the waiver or variance and be subject to the rule for which the waiver or variance was granted; or
  - d. Revocation of the waiver or variance is required by a change in law.

## **B. Federal Regulation Waivers**

1. As noted above, the Department cannot grant waivers or variances from federal regulations. The federal CMS may, however, grant a waiver of specific requirements of the Life Safety Code as provided in 42 CFR 485.623(d)(3).
2. CMS may grant such a waiver only if the hospital can demonstrate that the waiver will not adversely affect patient health, safety or welfare.



3. All requests for waivers or continuance of a waiver of federal regulations must be submitted in writing on a SOD form with additional justification if necessary.
4. Waiver requests should be sent to the Provider Regulation and Quality Improvement Section, Bureau of Quality Assurance, P. O. Box 2969, Madison, WI 53701-2969. The BQA will forward the federal waiver request to CMS for final approval or denial.

## **VI. APPEAL PROCESSES**

**The following information is for general purposes only. A hospital should refer to the applicable legal requirements in effect at the time it receives notice of a Department or federal action that may be subject to appeal.**

### **A. State Appeals**

1. A hospital may appeal a decision by the Department to withhold, suspend or revoke approval to maintain a hospital as provided in Sec. 50.35, Wis. Stats.
2. Issuance of a statement of survey findings or SOD is not subject to appeal. A hospital may, however, consult with Department staff as provided in Sec. 50.36(4), Wis. Stats., regarding survey findings before submitting a corrective action plan.

### **B. Federal Appeals**

A hospital that wishes to contest an adverse CMS determination may request a hearing before an Administrative Law Judge of the federal Department of Health and Human Services as provided in 42 CFR 498.

## **VII. COMPLAINTS**

### **A. Entity Patient Complaints**

The BQA responds to two types of health care complaints: facility practices and caregiver misconduct. The Health Services Section of the Bureau receives complaints and conducts complaint surveys for facility practice concerns such as inappropriate or inadequate health care, lack of staff training, understaffing, poor quality care, etc. The Health Services Section phone number is (608) 243-2024.

Hospitals and other health services providers are required to provide patients with the written address of the BQA to allow patients to submit complaints directly to the Bureau. Complaints may be submitted in writing to Bureau of Quality Assurance, Health Services Section, 2917 International Lane, Suite 300, Madison, WI 53704.

Medicare participating hospitals, including CAHs, must meet the federal Emergency Medical Treatment and Labor Acts (EMTALA) statute and regulations found in 42 CFR 489.24 and related requirements at 42 CFR 489.20(l), (m), (q), and (r). EMTALA requires hospitals with emergency departments to provide a medical screening examination to any individual who comes to the emergency department and requests such an examination, and prohibits hospitals with emergency departments from refusing to examine or treat individuals with an emergency medical condition. EMTALA prescribes requirements for appropriate transfer of individuals with an emergency medical condition. All hospitals are expected to be familiar with, and in compliance with, this set of regulations. BQA surveyors conduct EMTALA investigations as fact-finders for CMS. CMS determines, with the assistance of expert physician review when indicated, whether an EMTALA

violation has occurred. Hospitals that violate the EMTALA provisions are subject to civil monetary penalties. If the conditions leading to the EMTALA violation are not corrected, CMS may terminate the hospital's Medicare certification.

## **B. Caregiver Misconduct**

Complaints about caregiver misconduct relate to specific incidents between a caregiver and patient such as:

- Abuse—hitting, slapping, verbal, or sexual actions;
- Neglect--intentional carelessness or disregard of policy or care plan;
- Misappropriation--theft, using property without consent such as telephone or credit cards.

For complaints concerning noncredentialed caregivers such as nurse aides or personal care workers, contact the Caregiver Intake Unit at (608) 243-2019 or E-mail Caregiver Intake. For complaints concerning credentialed staff (nurses, doctors, LPNs, counselors, etc.) contact the Department of Regulation & Licensing at (608) 266-7482.

All entities regulated by the Bureau of Quality Assurance must investigate all allegations of caregiver misconduct, immediately protect patients from subsequent incidents of caregiver misconduct, and make a determination whether the incident must be reported to BQA. To assist in making those determinations refer to the Caregiver Misconduct and Injuries of Unknown Source Entity Investigation and Reporting Requirement flowchart. To report allegations use forms DLS-2447, Incident Report of Caregiver Misconduct and Injuries of Unknown Source. The documents are located on the Department of Health and Family Services Internet at <http://dhfs.state.wi.us/caregiver/contacts/Complaints.htm> or contact the Caregiver Central Intake by phone at (608) 243-2019.